

TOWN AND COUNTRY LEASING, LLC

v.

MARCEL W. DUBOIS, d/b/a DUBOIS LIVESTOCK

Submitted on Briefs February 24, 2011
Decided March 3, 2011

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Marcel W. Dubois appeals from a judgment of the Superior Court (York County, *Brennan, J.*) granting Town and Country Leasing (TCL) a summary judgment on its complaint seeking to recover a deficiency following Dubois's default on a contract, and dismissing Dubois's counterclaim. Contrary to Dubois's contentions, the court (1) had jurisdiction because the forum selection clause in the contract allowed TCL to litigate this matter in Maine; and (2) properly denied Dubois's motion to dismiss the complaint because, viewing its allegations in the light most favorable to TCL, "it set[] forth elements of a cause of action or allege[d] facts that would entitle [TCL] to relief pursuant to some legal theory," namely breach of contract, *Johnston v. Me. Energy Recovery Co., LP*, 2010 ME 52, ¶ 10, 997 A.2d 741, 744 (quotation marks omitted).

Furthermore, the court did not err in granting TCL's motion for summary judgment because it properly considered the sworn affidavit of TCL's senior vice president pursuant to M.R. Civ. P. 56(e) and M.R. Evid. 803(6), and because TCL's statement of material facts, which Dubois did not properly controvert, revealed no genuine issue of material fact and established that TCL was entitled to judgment as a matter of law. M.R. Civ. P. 56(c), (h)(4). Finally, the court

correctly dismissed Dubois's counterclaim because it did not allege that TCL or the original holder of his contract made any misrepresentation of fact that he relied on to his detriment, and the court correctly interpreted the statutory provisions asserted by Dubois as failing to support his claims. *See McDaniel v. Elliott*, 497 S.E.2d 786, 788 (Ga. 1998) ("The tort of fraud is defined in Georgia law as the willful misrepresentation of a material fact, made to induce another to act, upon which such person acts to his injury.").¹

The entry is:

Judgment affirmed.

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FOR CLERK REFERENCE ONLY

¹ A choice of law clause in the contract specified that it was governed by the substantive law of Georgia.